# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 8723 of 2000

**For Approval and Signature:**

**HON'BLE MR JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT STATE ROAD TRANSPORT CORPORATION LIMITED - Petitioner(s)**

**Versus**

**DINESHBHAI HIRABHAI SHRIMALI - Respondent(s)**

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**Appearance :**

MR UI VYAS for Petitioner No(s).: 1.

MR HARESH J TRIVEDI for Respondent No(s).: 1.

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**CORAM : HON'BLE MR JUSTICE KS JHAVERI**

**Date : 02/08/2005**

**ORAL JUDGMENT**

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1. This petition is directed against the judgment and award dated 28th January, 2000 passed by the Labour Court, Baroda in Reference [L.C.V.] No. 13/96, whereby the Labour Court has directed the petitioner Corporation to reinstate the respondent on his original post with

continuity of service along with 50% back wages.

2. The short facts of the case are that the respondent was working as a Helper with the petitioner Corporation. The respondent without informing his Superior Officer proceeded on leave for the period from 5th February, 1995 to 9th February, 1995. Therefore, the petitioner Corporation issued a show cause notice and subsequently a charge sheet was issued to the respondent on 7th February, 1995. Thereafter departmental inquiry was initiated against the respondent. Since the charges levelled against the respondent was proved, he was terminated from the service w.e.f. 24th March, 1995.

2.1. Feeling aggrieved by the said order, the respondent preferred departmental appeal before the Appellate Authority which came to be dismissed on 17th October, 1995. Pursuant to that the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Baroda for adjudication. The Labour Court after considering the case on merits, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties

and have perused the materials placed on record. While admitting the petition, this Court on 9th August, 2000 stayed the operation of the impugned award. While passing the impugned award the Labour Court has given the benefit of doubt to the respondent workman. In my opinion, the Labour Court was justified in ordering reinstatement to the workman. I am in complete agreement with the reasonings given by the Labour Court in ordering reinstatement in service to the respondent. Hence, the respondent is required to be reinstated in service.

4. Having gone through the award, it appears that the Labour Court has not given any cogent reasons as to on what basis it has awarded back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages

should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua back wages is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The impugned award dated 28th January, 2000 passed by the Labour Court, Baroda in Reference [L.C.V.] No. 13/96 qua back wages is quashed and set aside and rest of the award is confirmed. Further a penalty of stoppage of one increment with future effect is imposed on the respondent. The petitioner Corporation shall reinstate the respondent in service within three months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

**[K.S. JHAVERI, J.]**

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